



March 27, 2015

Via E-mail and U.S. Mail

Ms. Leslie Patterson
Remedial Project Manager
U.S. Environmental Protection Agency
77 West Jackson Blvd. (SR-6J)
Chicago, IL 60604-3590

Re: Response of Coca-Cola Refreshments USA, Inc. to Special Notice Letter
For the South Dayton Dump and Landfill Site, Spill ID No. B52B

Dear Ms. Patterson:

On behalf of Coca-Cola Refreshments USA, Inc. ("CCR"), we are responding to the Special Notice Letter to CCR, dated January 16, 2015, regarding the South Dayton Dump and Landfill Site in Moraine, Ohio. In a conference with Tom Nash on February 10, 2015, Mr. Nash agreed to grant respondents a 30-day extension of time to respond to the Special Notice Letter and 104(e) request for information. Mr. Nash further agreed to grant CCR an extension until March 27, 2015 for its response.

In its Special Notice Letter, EPA contends that "[b]ased on an extensive review of records" EPA has identified CCR as a party that "contributed hazardous substances to the Site," and is potentially liable under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). EPA made a similar allegation in its General Notice Letter of September 10, 2012, to which CCR responded by letter dated September 17, 2012. As you know, CCR has also been named as a defendant in two contribution lawsuits regarding the Site; *Hobart Corp., et al. v. Waste Management of Ohio, Inc., et al. ("Hobart II")* in 2010, that was dismissed, and *Hobart Corp. v. Dayton Power & Light Co.*, No. 3:13-cv-0115 (S.D. Ohio) ("*Hobart III*") in 2013, that is currently pending.

To date, neither EPA nor the Plaintiffs in the two lawsuits have produced any information to support allegations that the former Dayton Coca-Cola Bottling Company plant sent any hazardous substances to the Site. Accordingly, CCR respectfully declines to participate in settlement discussions with EPA at this time.

DMEAST #21250397 v1

EPA's 2012 General Notice letter was addressed to CCR's corporate predecessor, Coca-Cola Enterprises, Inc. Upon receipt of EPA's letter, CCR immediately began investigating the allegations. We submitted a FOIA request to EPA requesting that EPA produce the following:

documents and other information related to EPA's assertion that Coca-Cola Enterprises, Inc., or any corporate predecessor or affiliate, "may have owned or operated the Site or generated or transported hazardous substances that were disposed of at the Site.

In response to this FOIA request, we received a letter from EPA, enclosing two deposition transcripts, of Michael Wendling and Edward Grillot, taken in the case of *Hobart Corp. v. Waste Management of Ohio, Inc.*, No. 3:10-cv-195 (S.D. Ohio) ("*Hobart I*").¹ In Mr. Grillot's deposition, he testified that when he was a "little kid" he observed Coca-Cola trucks disposing of wooden cases, bottles and cartons of syrup at the Site.² Like Grillot, Mr. Wendling is the son of an owner of the Site who played there as a child. He allegedly recalled shipments of wood trays, bottles and bottle caps, but no liquids, arriving in "red dump trucks" marked "Coca-Cola."³

In the *Hobart III* lawsuit, Edward Grillot and Michael Wendling gave depositions again, as did another cousin, David Grillot. In Edward Grillot's 2013 deposition, he again testified that Coca-Cola trucks brought wooden crates and bottles, and sometimes containers with syrup in them.⁴ He also agreed that local restaurants and stores could have been the source of Coca-Cola bottles, crates, and syrup containers at the Site.⁵ Michael Wendling testified in a 2014 deposition that "Coca-Cola dumped bottles and crates" which "was all burnt" in the incinerator, and he recalled bottle caps as well.⁶ Another son of the landfill owners, David Grillot, testified in a deposition that he was employed by the Dayton Coca-Cola Bottling Company in the warehouse and as a truck driver from 1979 to 1992. He recalled only a single time that Coca-Cola may have dumped a load of broken bottles and wooden shells at the Site.⁷

¹ See letter from Noreen Weimer of EPA, received October 30, 2012, attached as Exhibit 1.

² Deposition of Edward Grillot, (April 24, 2012), at 114 – 115, attached as Exhibit 2.

³ Deposition of Michael Wendling, (July 17, 2012), at 59 – 60, attached as Exhibit 3.

⁴ Deposition of Edward Grillot, (December 16-17, 2013), at 41 - 43, attached as Exhibit 4.

⁵ *Id.*, at 644 – 45, attached as Exhibit 5.

⁶ Deposition of Michael Wendling (April 23, 2014), at 44, 51-54, attached as Exhibit 6.

⁷ Deposition of David Grillot (May 28, 2014), at 102 - 104, attached as Exhibit 7.

Ms. Leslie Patterson
Remedial Project Manager
U.S. Environmental Protection Agency
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CCR's internal review of the former Dayton plant has also not produced evidence that any hazardous substances from the plant were disposed at the Site. At this time, we understand that the former Dayton Coca-Cola Bottling Company plant located on Ludlow Avenue in Dayton ceased bottling operations in about 1982, and the property was subsequently sold in 2001. In connection with the *Hobart III* litigation, CCR has obtained records from Safety-Kleen of Ohio documenting the proper disposal of waste antifreeze, oil and other products from the former Dayton plant on Ludlow Avenue. CCR will produce these documents in response to the 104(e) request for information.

Please address all further communication regarding this matter to me, and feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Leah J. Knowlton", written in a cursive style.

Leah J. Knowlton

cc: Elizabeth T. Irvin, Esq.

EXHIBIT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SRC-7J

Leah J. Knowlton
Miller & Martin PLLC
Attorneys at Law
1170 Peachtree Street, N.E., Suite 800
Atlanta, Georgia 30309-7706

Re: Freedom of Information Act
FOI Number: EPA-R5-2013-000091
Site/Project/File Number: South Dayton Dump and Landfill
Moraine, Ohio

Dear Ms. Knowlton:

This letter serves as the Superfund Division's response to your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency dated September 28, 2012.

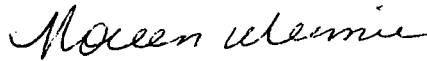
No charge is applicable for processing your request because the cost does not exceed the \$14.00 minimum.

Superfund public dockets and Administrative Records may be obtained at the Superfund Record Center located at the EPA office in Room 711. The Record Center is open to the public Monday through Friday 8:00 am to 4:00 pm. These documents can also be found online at http://www.epa.gov/region5superfund/sfd_foia.htm.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the request number EPA-R5-2013-000091. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Should you need additional assistance regarding this FOIA request, you may contact me at (312) 353-8655. All other matters should be directed to Evette Jones, Chief, Enforcement Services Section #3 at (312) 886-7572.

Sincerely,

A handwritten signature in cursive script, appearing to read "Noreen Weimer".

Noreen Weimer
FOIA Specialist
Enforcement Services Section #3
Superfund Division

Enclosures

cc: Region 5 FOIA Office, MRI-9J
FOIA File
C. Ropski, SE-5J
T. Nash, ORC, C-14J

DOCUMENTS TO THE REQUESTOR
SOUTH DAYTON DUMP AND LANDFILL
MORaine, OHIO

<u>Document Type</u>	<u>Date</u>	
CD w/Document List	10/18/12	1 CD

SOUTH DAYTON DUMP & LANDFILL / FOIA 0091-13 / FC 7979

Doc ID	Region	Doc Date	Doc Title	Pages
<input type="checkbox"/> <u>443551</u>	05	07-17-2012	DEPOSITION OF MICHAEL WENDLING (W/ INDEX & EXHIBITS)	55
<input type="checkbox"/> <u>443552</u>	05	04-24-2012	DEPOSITION OF EDWARD GRILLOT (W/ INDEX & EXHIBITS)	334

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

HOBART CORPORATION, et al.,)

)

Plaintiffs,)

)

-vs-

) Case No. 3:10-CV-195

)

WASTE MANAGEMENT OF OHIO,)

INC., et al.,)

)

Defendants.)

DEPOSITION OF EDWARD GRILLOT taken by me,
Susan L. Bickert, a Certified Shorthand Reporter
and Notary Public in and for the State of Ohio, at
large, pursuant to the Federal Rules of Civil
Procedure, as upon Direct Examination, at the
offices of Thompson Hine, LLP, Austin Landing I,
10050 Innovation Drive, Suite 400, Dayton, Ohio
45342, on Tuesday, April 24, 2012, commencing at
10:10 o'clock a.m. on behalf of the Plaintiffs.

1 APPEARANCES:

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10 Office of Regional Council

Mail Code C-14J

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16 Cleveland, Ohio 44115

17 ALSO PRESENT:

18 Ken A. Brown, ITW

Scott Arentsen, DP&L

19 Kaitlyn Harantschuk, Legal Assistant

1 drive-in movie theater, and Dad when he'd take us
2 he told us stories about that.

3 Q Did you observe the Blaylock trucks
4 coming in to your site?

5 A Yeah, mm-hmm.

6 Q And what about -- in addition to
7 burnables, what about industrial waste? Was that
8 coming in from Blaylock?

9 A I don't remember from them.

10 Q Here's one since you got a can right
11 in front of you. What about Coca-Cola?

12 A Yeah.

13 Q Yeah, what?

14 A We got a lot of stuff from them.

15 Q What kind of stuff?

16 A Wooden -- you know, wooden Coca-Cola
17 for cases of Coke.

18 Q Mm-hmm.

19 A We got a lot of their bottles, you
20 know, ones that used to be --

21 Q A nickel or a penny?

22 A Two cents apiece. They would be
23 chipped or something. They were damaged, and
24 they'd come in truckloads. And then sometimes
25 there would be cartons of syrup would come in like

1 paper boxes, and they'd dump big -- a whole bunch
2 of that off.

3 Q Anything else that you can think of?

4 A That's all I can think of at the
5 moment.

6 Q What about frequency? How often was
7 it coming in from Coke?

8 A They would come maybe once a month
9 maybe, something like that.

10 Q What size of loads were they coming
11 in on?

12 A I don't remember.

13 Q Their own trucks or were they using
14 --

15 A Coca-Cola emblem was on 'em, but I
16 don't remember what --

17 Q Does this go back to when you were a
18 little kid?

19 A Yeah.

20 Q All right. And what about their
21 competitor, Pepsi-Cola?

22 A I don't remember.

23 Q You don't remember Pepsi coming in?

24 A No, hmm-mm. They were closer, I
25 think, to Powell Road because they were up north.

1 STATE OF OHIO)
) SS: C-E-R-T-I-F-I-C-A-T-E

2 COUNTY OF MIAMI)

3 I, SUSAN L. BICKERT, a Certified
4 Shorthand Reporter and Notary Public in and for the
5 State of Ohio at large, duly commissioned and
6 qualified,

7 DO HEREBY CERTIFY that the above-named
8 EDWARD GRILLOT was by me first sworn to testify to
9 the truth, the whole truth, and nothing but the
10 truth; that his testimony was reduced to writing by
11 me stenographically in the presence of the witness
12 and thereafter reduced to typewriting; that the
13 signature of the witness to the deposition was
14 expressly not waived, and was taken at the time and
15 place hereinafter set forth, pursuant to Notice and
16 Agreement of Counsel.

17 I FURTHER CERTIFY that I am not a rela-
18 tive nor attorney for either party herein, nor in
19 any manner interested in the event of this action.

20 IN WITNESS WHEREOF, I have hereunto set
21 my hand and seal of office this 4th day of May,
22 2012.

23

SUSAN L. BICKERT

24

Notary Public, State of Ohio

My Commission expires: 8-23-13

25

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

HOBART CORPORATION, et al.,)
)
Plaintiff,)
)
-vs-) Case No. 3:10-CV-195
)
)
WASTE MANAGEMENT OF OHIO,)
INC., et al.,)
)
Defendants.)

DEPOSITION OF MICHAEL A. WENDLING, taken
by me, Susan L. Bickert, a Certified Shorthand
Reporter and Notary Public in and for the State of
Ohio, at large, as upon Direct Examination, at the
offices of Thompson Hine LLP, Austin Landing I,
10050 Innovation Drive, Suite 400, Dayton, Ohio
45342, on Tuesday, July 17, 2012, commencing at
9:30 o'clock a.m. on behalf of the Plaintiffs.

APPEARANCES:

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f/k/a MONSANTO COMPANY, f/k/a MONSANTO
RESEARCH COMPANY:
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ALSO PRESENT:

Kaitlyn Harantschuk, Legal Assistant

INDEX TO EXAMINATION

Attorney	Direct	Cross	Redirect
Mr. Silver	6		128
Mr. Merrill		69	
Mr. Harbeck		96	

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<p>1 to your knowledge. Let me start with B.G. Danis 2 Company. 3 A Danis. 4 Q Yeah. 5 A Yeah, it was -- it was a big 6 contracting company at that time. Still is, I 7 guess. 8 Q They were a big contracting company? 9 A Mm-hmm. 10 Q What kind of things did they 11 contract? 12 A Buildings, roads. 13 Q Were they -- was B.G. Danis a 14 customer of the South Dayton Dump to your 15 knowledge? 16 A At that time, yeah, I have seen the 17 trucks come in. 18 Q And what time would that have been? 19 A In the early sixty years. Well, 20 actually all the time. 21 Q All the time while you were 22 associated with the dump? 23 A Right. 24 Q Now, what kind of trucks did B.G. 25 Danis bring to the dump?</p>	<p>1 wood material? 2 A Could be metal. 3 Q Anything else? 4 A No fill, so, no. 5 Q Okay. Now, what about a company 6 called Blaylock Trucking? 7 A Blaylock? 8 Q Yeah. 9 A No. 10 Q Don't have any familiarity with that 11 company name? 12 A Well, I know the name. 13 Q Right. 14 A But I don't see them bringing 15 anything there. 16 Q You don't recall their bringing 17 anything to the South Dayton Dump? 18 A No. 19 Q What about Coca-Cola? 20 A Coca-Cola, yes. 21 Q Tell me about Coca-Cola. 22 A Bottles, caps, wood trays that the 23 bottles came in. Truckloads of them. 24 Q Any liquids? 25 A No.</p>
Page 58	Page 60
<p>1 A Dump trucks. 2 Q Do you remember the color? 3 A Red. 4 Q They had red dump trucks? 5 A Mm-hmm. 6 Q Do you recall the name "Danis" on 7 them? 8 A Yes. 9 Q What kind of waste did you observe 10 them bringing to the site? 11 A Well, they would mostly bring in 12 wood type of stuff. 13 Q What type of stuff? 14 A Wood. 15 Q Anything else? 16 A No. 17 Q Construction? 18 MR. HARBECK: Object. Leading. 19 BY MR. SILVER (Continuing): 20 Q Do you know whether they brought 21 construction debris into the site? 22 A Well, wood material would be 23 construction debris to me. 24 Q Do you know whether they brought in 25 other kinds of construction material other than</p>	<p>1 Q None that you can recall? 2 A No. 3 Q And you recall Coca-Cola bottles and 4 caps and wood trays coming to the South Dayton 5 Dump? 6 A Right. 7 Q You observed that? 8 A Definitely, yes. 9 Q How frequently? 10 A Well, that wouldn't be a real 11 frequent thing. You know, that might have just 12 been maybe every three, four, five, six months or 13 something, you know, whenever they did a cleanup, I 14 guess. 15 Q What kind of trucks? 16 A Dump trucks. 17 Q And did it say "Coca-Cola" on the 18 trucks? 19 A Coca-Cola, yes, mm-hmm. 20 Q Are you familiar with a company 21 named Duriron? 22 A Duriron, yes. 23 Q D-U-R-I-R-O-N. What can you tell me 24 about Duriron? 25 A Not a whole lot.</p>

I, MICHAEL A. WENDLING, do hereby certify
that the foregoing is a true and accurate
transcript of my testimony.

MICHAEL A. WENDLING

STATE OF OHIO)
) SS:

COUNTY OF _____)

Sworn to before me and subscribed in my
presence by the same MICHAEL A. WENDLING, this
day of _____, 2012.

NOTARY PUBLIC

My Commission expires: _____

STATE OF OHIO)
) SS: C-E-R-T-I-F-I-C-A-T-E
COUNTY OF MIAMI)

I, SUSAN L. BICKERT, a Certified
Shorthand Reporter and Notary Public in and for the
State of Ohio at large, duly commissioned and
qualified,

DO HEREBY CERTIFY that the above-named
MICHAEL A. WENDLING was by me first sworn to
testify to the truth, the whole truth, and nothing
but the truth; that his testimony was reduced to
writing by me stenographically in the presence of
the witness and thereafter reduced to typewriting;
that the signature of the witness to the deposition
was expressly not waived, and was taken at the time
and place hereinafter set forth, pursuant to Notice
and Agreement of Counsel.

I FURTHER CERTIFY that I am not a rela-
tive nor attorney for either party herein, nor in
any manner interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set
my hand and seal of office this _____ day of July,
2012.

SUSAN L. BICKERT
Notary Public, State of Ohio
My Commission expires: 8-23-13

PLEASE USE THIS ERRATA SHEET TO MAKE ANY
AND ALL CORRECTIONS BY LISTING THE PAGE NUMBER,
LINE NUMBER AND THEN A BRIEF DESCRIPTION OF THE
ERROR. PLEASE DO NOT MAKE ANY MARKS OR CORRECTIONS
ON THE TRANSCRIPT. IF NEEDED, USE THE BACK OF THIS
SHEET.

UPON COMPLETION, PLEASE SIGN AND DATE THIS
SHEET AT THE BOTTOM. THANK YOU.

SIGNATURE: _____ DATE: _____

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

* * *

HOBART CORPORATION,

et al.,

Plaintiffs,

CASE NO. 3:13-cv-115

vs.

VOLUME I

THE DAYTON POWER AND LIGHT

COMPANY, et al.,

Defendants.

* * *

Deposition of EDWARD GRILLOT, Witness
herein, called by the Plaintiffs for direct
examination pursuant to the Rules of Civil
Procedure, taken before me, Barbara A. Nikolai, a
Notary Public in and for the State of Ohio, at
Sebaly, Shillito + Dyer, 1900 Kettering Tower,
40 North Main Street, 13th Floor Conference Room,
Dayton, Ohio, on Monday, December 16th, 2013, at
9:22 o'clock a.m.

* * *

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5	BY MR. VAN KLEY:	248
6	BY MR. ROMINE:	284
7	BY MR. VAN KLEY:	285
8	EXHIBIT MARKED	
9	(Thereupon, Defendants' Exhibit	224
10	Number 1, map of various landfills,	
11	was marked for purposes of	
12	identification.)	
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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11 Bricker & Eckler

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22 * * *

09:53:28 1 were being crushed instead of burned.

09:53:29 2 By then the EPA was really pretty
09:53:32 3 heavy on Doyle and the dump. South Dayton
09:53:35 4 Dump, I'm sorry.

09:53:35 5 Q. Okay. That's okay. And so the
09:53:39 6 business again slowed down sometime in the mid
09:53:41 7 or late '80s?

09:53:43 8 A. Um-hum. Yes.

09:53:43 9 Q. And that's when -- that's when you
09:53:45 10 remember the city getting a car crusher?

09:53:49 11 A. Well, it wasn't actually the city.
09:53:50 12 I think there was a company down in West
09:53:54 13 Carrollton, a private owner, I believe, and
09:53:57 14 so --

09:53:57 15 Q. Okay. I'm going to move on now.
09:54:04 16 Coca-Cola, did you ever see any Coca-Cola
09:54:07 17 products come to the site?

09:54:09 18 A. Oh, yeah.

09:54:10 19 Q. And tell me a little bit about
09:54:13 20 that. What was the kind of waste that you
09:54:14 21 would see?

09:54:16 22 A. Oh, a lot of wood crates that
09:54:19 23 would carry like a 24 -- let's see --
09:54:25 24 24 bottles, and some of them were divided for
09:54:29 25 the small eight ounce, and then the others were

09:54:32 1 for like the 16 ounce, and they came in quite
09:54:37 2 often.

09:54:37 3 Q. Okay. Other than the wooden
09:54:40 4 cases, was there anything coming from
09:54:42 5 Coca-Cola?

09:54:42 6 A. A lot of bottles. They had -- we
09:54:45 7 thought they was pretty neat, because I
09:54:47 8 remember because they had stamped -- we started
09:54:49 9 collecting them, because at the bottom it would
09:54:51 10 say where the bottling company come in, because
09:54:55 11 people come and go, you get some even from as
09:54:59 12 far away as California, you know, so, we
09:55:03 13 collected state for state, you know.

09:55:05 14 Q. I see. And did -- did Coca-Cola
09:55:09 15 have their own trucks?

09:55:10 16 A. Yes, um-hum.

09:55:11 17 Q. And I'm trying to -- what was the
09:55:14 18 logo or emblem on the truck?

09:55:19 19 A. It was red and white. It said
09:55:24 20 Coca-Cola Bottling Company.

09:55:26 21 Q. And how often did these Coca-Cola
09:55:32 22 Bottling Company trucks come to South Dayton
09:55:35 23 Dump?

09:55:35 24 A. Maybe once a week. Maybe every
09:55:39 25 other week.

09:55:40 1 Q. Okay. And was there any syrup or
09:55:46 2 liquid that was ever dumped at the site from
09:55:49 3 Coca-Cola Bottling?

09:55:50 4 A. Sometimes there was containers, I
09:55:52 5 believe, had syrup in it. I don't remember
09:55:56 6 what they look like, but they --

09:55:59 7 Q. Okay. Do you remember any of the
09:56:01 8 drivers?

09:56:02 9 A. No.

09:56:02 10 Q. Okay. Was the syrup or liquid --
09:56:06 11 could you use that for anything?

09:56:09 12 A. Well, we tried to take some of it.
09:56:12 13 We had a -- a thing you put a CO2 cartridge in
09:56:16 14 and use it, but it didn't taste very good, so I
09:56:20 15 guess that's why they got rid of it, so --

09:56:22 16 Q. Okay. So you tried to -- you'd
09:56:23 17 take the syrup and make the soda out of it --

09:56:25 18 A. Yeah.

09:56:25 19 Q. -- but it didn't work very well?

09:56:27 20 A. No.

09:56:27 21 Q. Okay. Moving on now again.
09:56:35 22 Earlier you had mentioned a McCall's?

09:56:38 23 A. Um-hum.

09:56:39 24 Q. Yes?

09:56:39 25 A. Yes. I'm sorry.

1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Barbara A. Nikolai, a Notary
4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named EDWARD GRILLOT, was by me first duly
8 sworn to testify the truth, the whole truth and
9 nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

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EXHIBIT 5

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 * * *

5 HOBART CORPORATION,

6 et al.,

7 Plaintiffs,

CASE NO. 3:13-cv-115

8 vs.

VOLUME II

9 THE DAYTON POWER AND LIGHT

10 COMPANY, et al.,

11 Defendants.

12 * * *

13 Deposition of EDWARD GRILLOT, Witness
14 herein, called by the Plaintiffs for direct
15 examination pursuant to the Rules of Civil
16 Procedure, taken before me, Barbara A. Nikolai, a
17 Notary Public in and for the State of Ohio, at
18 Sebaly, Shillito + Dyer, 1900 Kettering Tower,
19 40 North Main Street, 13th Floor Conference Room,
20 Dayton, Ohio, on Tuesday, December 17th, 2013, at
21 9:01 o'clock a.m.

22 * * *

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1	EXHIBITS MARKED	PAGE
2	(Thereupon, Defendants' Exhibit	308
3	Number 2, dumping receipt tickets,	
4	was marked for purposes of	
5	identification.)	
6	(Thereupon, Defendants' Exhibit	446
7	Number 3, petition to enter a plea	
8	of guilty, was marked for purposes	
9	of identification.)	
10	(Thereupon, Defendants' Exhibit	464
11	Number 4, South Dayton Dump and	
12	Landfill site map, was marked for	
13	purposes of identification.)	
14	(Thereupon, Defendants' Exhibit	507
15	Number 5, South Dayton Dump and Land	
16	Site map, was marked for purposes of	
17	identification.)	
18	(Thereupon, Defendants' Exhibit	649
19	Number 6, Google map, was marked for	
20	purposes of identification.)	
21	(Thereupon, Defendants' Exhibit	658
22	Number 7, photocopy of a color	
23	photograph of a Container Service	
24	truck, was marked for purposes of	
25	identification.)	

1 (Thereupon, Defendants' Exhibit 666
2 Number 8, deposition of Michael A.
3 Wendling, was marked for purposes of
4 identification.)

5 (Thereupon, Defendants' Exhibit 669
6 Number 9, deposition of Horace
7 Boesch, Jr., taken on the 28th day
8 of February, 2006, was marked for
9 purposes of identification.)

10 (Thereupon, Defendants' Exhibit 685
11 Number 10, deposition of Horace
12 Boesch, Jr., taken on December 1st,
13 2011, was marked for purposes of
14 identification.)

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16:46:07 1 Q. Okay. All right. Thank you.
16:46:12 2 Now -- so I believe what we were talking about
16:46:15 3 was that Coca-Cola and Pepsi and 7-Up would
16:46:20 4 sell to lots of customers in the Dayton area,
16:46:22 5 correct?

16:46:28 6 A. Right.

16:46:28 7 MR. ROMINE: Objection.

16:46:34 8 Hypothetical.

16:46:34 9 THE WITNESS: Yes.

16:46:34 10 (Thereupon, the court reporter
16:46:34 11 interrupted the proceedings.)

16:46:34 12 BY MR. HAUGHEY:

16:46:35 13 Q. Okay. Now, you and I grew up in
16:46:39 14 the Dayton area, so I remember the old wooden
16:46:43 15 crates being dropped off. In fact, my
16:46:45 16 grandfather had a bar/tavern on Xenia Avenue.
16:46:49 17 So, anyway.

16:46:51 18 So we -- those would come in and
16:46:54 19 then they would be used and then the bar or the
16:46:56 20 customer would have to get rid of that waste,
16:46:56 21 correct?

16:46:58 22 A. Correct.

16:46:58 23 Q. Okay. So the fact that you saw
16:47:03 24 bottles at the site that had -- that were a
16:47:05 25 Coca-Cola bottle or an empty -- you know,

16:47:09 1 trays, you know, the old wooden carts or even
16:47:12 2 some syrup that went bad at a restaurant, it
16:47:14 3 could have come from them just as easily as it
16:47:17 4 could have come from Coca-Cola, correct?

16:47:20 5 A. Correct.

16:47:20 6 Q. Okay. All right. Thank you. I
16:47:29 7 believe you testified yesterday and again in
16:47:35 8 2012, that Duriron sent waste to the South
16:47:41 9 Dayton Dump site. Do you remember that?

16:47:42 10 A. Yes, I do.

16:47:43 11 Q. Now, I believe in your 2012
16:47:49 12 testimony, the only waste that you testified
16:47:51 13 coming to the site what was you called the hot
16:47:54 14 waste, correct?

16:47:58 15 A. Yes. Yes.

16:47:58 16 Q. On the Apollo vessels, as you
16:48:00 17 called them?

16:48:01 18 A. From -- from 2012?

16:48:01 19 Q. Yeah, from the 2012 deposition.

16:48:02 20 A. Okay. I believe that was -- yes.
16:48:03 21 Yeah.

16:48:03 22 Q. And then I believe yesterday you
16:48:06 23 testified about another stream called an oily
16:48:10 24 liquid.

16:48:10 25 A. Correct.

1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Barbara A. Nikolai, a Notary
4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named EDWARD GRILLOT, was by me first duly
8 sworn to testify the truth, the whole truth and
9 nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

20

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EXHIBIT 6

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 * * *

5 HOBART CORPORATION, et al.,

6 Plaintiffs,

7 vs.

CASE NO. 3:13-cv-00115-WHR

8 THE DAYTON POWER AND

9 LIGHT COMPANY, et al.,

10 Defendants.

11 * * *

12 Deposition of MICHAEL A. WENDLING,
13 Witness herein, called by the Plaintiffs for
14 direct examination pursuant to the Rules of Civil
15 Procedure, taken before me, Michelle A. Elam, a
16 Notary Public in and for the State of Ohio, at the
17 offices of Sebaly, Shillito + Dyer, 1900 Kettering
18 Tower, 40 North Main Street, Dayton, Ohio, on
19 Friday, the 23rd day of April, 2014, at 9:33 a.m.

20 * * *

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10	BY MR. MERRILL:	235
11	BY MR. SLAUGHTER:	240
12	BY MR. RUDLOFF:	241
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21	(Thereupon, Wendling Exhibit Number	70
22	1 was marked for purposes of	
23	identification.)	
24	(Thereupon, Wendling Exhibit Number	89
25	2 was marked for purposes of	

1 identification.)

2 (Thereupon, Wendling Exhibit Number 125

3 3 was marked for purposes of

4 identification.)

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1 ALSO PRESENT:

2 Elizabeth Theobald Irvin, Coca-Cola
3 Refreshments USA, Inc.:

4 * * *

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10:07:51 1 in?

10:07:51 2 A. Yeah.

10:07:52 3 Q. What kind of waste got burnt?

10:07:54 4 A. Wood, metal, telephone poles,
10:08:03 5 skids, paint, ink, ice cream. A lot of
10:08:12 6 times --

10:08:12 7 Q. It sounds like you were focused on
10:08:18 8 that ice cream.

10:08:18 9 A. I couldn't get there fast enough
10:08:19 10 to get that ice cream.

10:08:19 11 Q. I think you're going to get some
10:08:21 12 of that for lunch.

10:08:22 13 A. And, like I say, Coca-Cola dumped
10:08:27 14 bottles and crates. Pepsi Cola bottles and
10:08:31 15 crate. Household goods or whatever.
10:08:35 16 Refrigerators, stoves. It was all burnt.

10:08:37 17 Q. Did anything not get burnt that
10:08:40 18 went to the dump?

10:08:41 19 A. Yeah. The ice cream we picked up.
10:08:47 20 It didn't get burnt. But if it did get -- no,
10:08:55 21 I'd say there's no -- the only thing that might
10:08:59 22 not have got burnt would be like if someone
10:09:02 23 would bring something that we wanted, we'd just
10:09:05 24 get it before it got burnt. But everything got
10:09:09 25 burnt at the dump.

10:14:57 1 A. Yeah. Sure. Definitely.

10:14:59 2 Q. Was that something that you saw
10:15:01 3 every day that you were at the dump?

10:15:02 4 A. I can't say every day. I'm not
10:15:06 5 going to say every day.

10:15:07 6 Q. Frequently?

10:15:08 7 A. Yeah. Frequently. Sometimes
10:15:10 8 twice when I might be there.

10:15:11 9 Q. Sometimes twice?

10:15:12 10 A. Yeah. The truck might come and
10:15:15 11 another one might come. But it was frequent.

10:15:17 12 Q. All right. Let's see what time it
10:15:26 13 is. We've been going for about forty-five
10:15:35 14 minutes. I'm going to keep on going if you
10:15:37 15 want to keep on going.

10:15:38 16 A. Let's do it.

10:15:39 17 Q. Let me ask you about some specific
10:15:43 18 companies, some of which you have already
10:15:46 19 mentioned. Let's start with the Coca-Cola.
10:15:51 20 You mentioned Coca-Cola earlier.

10:15:51 21 A. Yes. Uh-huh.

10:15:51 22 Q. Do you remember mentioning them at
10:15:54 23 the last deposition?

10:15:55 24 A. Yes.

10:15:58 25 Q. Did Coca-Cola bring waste to the

10:16:02. 1 site?

10:16:02 2 A. Broken bottles in crates, wood
10:16:08 3 crates.

10:16:08 4 Q. And you observed that.

10:16:09 5 A. Uh-huh.

10:16:10 6 Q. What about caps?

10:16:11 7 A. Well, that was one of our
10:16:15 8 little -- yeah, when they would dump Coca-Cola
10:16:19 9 or Pepsi -- back then, they had games where you
10:16:25 10 took the plastic thing out in the center. I
10:16:29 11 don't know if it was Monopoly or some type of
10:16:33 12 game that you played and we would go through
10:16:35 13 and save the -- get the caps to see what -- you
10:16:40 14 know, whatever we was looking for. I can't
10:16:43 15 recall if it was -- like I said, I don't
10:16:45 16 remember the games right now. But --

10:16:48 17 Q. This was Coca-Cola, to your
10:16:50 18 memory?

10:16:51 19 A. Yeah.

10:16:52 20 Q. Pepsi, too?

10:16:53 21 A. I'm -- I'm pretty sure.

10:16:54 22 Q. And what age were you playing --
10:17:01 23 grabbing these caps and playing the games?

10:17:03 24 A. Well, probably then, we were
10:17:05 25 probably kind of young. Well, fifteen, right

10:17:12 1 around in that area.

10:17:13 2 Q. Uh-huh. Maybe younger. What
10:17:15 3 about when you were eight, nine, ten?

10:17:17 4 A. It could have been.

10:17:23 5 Q. Wood trays, did those --

10:17:25 6 A. Yeah, that the bottles used to sit
10:17:28 7 in.

10:17:28 8 Q. The bottles themselves?

10:17:30 9 A. Yes.

10:17:31 10 Q. The caps were all from Coke?

10:17:33 11 A. Right.

10:17:34 12 Q. Anything else that you can think
10:17:36 13 of that came from Coke?

10:17:36 14 A. No.

10:17:41 15 Q. And what kind of vehicles did this
10:17:43 16 stuff come in?

10:17:44 17 A. Well, there was -- the trucks. As
10:17:52 18 I recall, it would be the same trucks that they
10:17:55 19 delivered, had like doors on the side. That's
10:18:00 20 my best recollection.

10:18:01 21 Q. We're still talking about Coke
10:18:03 22 now, right?

10:18:03 23 A. Yeah.

10:18:04 24 Q. Do you remember if the trucks had
10:18:07 25 Coca-Cola on them?

10:18:09 1 A. Oh, definitely.

10:18:09 2 Q. And you observed that?

10:18:11 3 A. Oh, sure.

10:18:12 4 Q. Do you know how frequently the
10:18:21 5 trucks came in?

10:18:21 6 A. I can't -- I don't think it was,
10:18:25 7 you know, frequent. It was probably when they
10:18:30 8 just had a large amount of stuff that they
10:18:34 9 wanted to get rid of. It's not a daily thing.
10:18:39 10 It might not have even been a weekly thing.

10:18:42 11 Q. Do you know whether when the
10:18:43 12 truck -- the Coca-Cola vehicle came in, whether
10:18:47 13 more than one came in at a time --

10:18:50 14 A. No. No.

10:18:50 15 Q. -- or a single one?

10:18:54 16 A. Just one.

10:19:02 17 Q. All right. Let's go on to another
10:19:05 18 company that you mentioned. You mentioned
10:19:08 19 Sherwin-Williams.

10:19:10 20 A. Right.

10:19:10 21 Q. Do you know what kind of a company
10:19:13 22 Sherwin-Williams Company was when you were
10:19:16 23 there?

10:19:16 24 A. It was a paint company.

10:19:17 25 Q. How did you happen to know that?

1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Michelle A. Elam, a Notary
4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named MICHAEL A. WENDLING, was by me first
8 duly sworn to testify the truth, the whole truth
9 and nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

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EXHIBIT 7

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 * * *

5 HOBART CORPORATION, et al.,

6 Plaintiffs,

7 vs. CASE NO. 3:13-cv-00115-WHR

8 THE DAYTON POWER AND

9 LIGHT COMPANY, et al.,

10 Defendants.

11 * * *

12 Deposition of DAVID A. GRILLOT, Witness
13 herein, called by the Plaintiffs for direct
14 examination pursuant to the Rules of Civil
15 Procedure, taken before me, Michelle A. Elam, a
16 Notary Public in and for the State of Ohio, at the
17 offices of Sebaly, Shillito + Dyer, 1900 Kettering
18 Tower, 40 North Main Street, Dayton, Ohio, on
19 Wednesday, the 28th day of May, 2014, at 1:06 p.m.

20 * * *

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17	(Thereupon, D. Grilloot Exhibit	52
18	Number 1 was marked for purposes of	
19	identification.)	
20	(Thereupon, D. Grilloot Exhibit	56
21	Number 2 was marked for purposes of	
22	identification.)	
23	(Thereupon, D. Grilloot Exhibit	77
24	Number 3 was marked for purposes of	
25	identification.)	

1 (Thereupon, D. Grillot Exhibit 95
2 Number 4 was marked for purposes of
3 identification.)
4 (Thereupon, D. Grillot Exhibit 95
5 Number 5 was marked for purposes of
6 identification.)
7 (Thereupon, D. Grillot Exhibit 128
8 Number 6 was marked for purposes of
9 identification.)
10 (Thereupon, D. Grillot Exhibit 130
11 Number 7 was marked for purposes of
12 identification.)
13 (Thereupon, D. Grillot Exhibit 131
14 Number 8 was marked for purposes of
15 identification.)
16 (Thereupon, D. Grillot Exhibit 133
17 Number 9 was marked for purposes of
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19 (Thereupon, D. Grillot Exhibit 133
20 Number 10 was marked for purposes of
21 identification.)
22 (Thereupon, D. Grillot Exhibit 133
23 Number 11 was marked for purposes of
24 identification.)
25

1 (Thereupon, D. Grillot Exhibit 133

2 Number 12 was marked for purposes of
3 identification.)

4 (Thereupon, D. Grillot Exhibit 133

5 Number 13 was marked for purposes of
6 identification.)

7 (Thereupon, D. Grillot Exhibit 133

8 Number 14 was marked for purposes of
9 identification.)

10 (Thereupon, D. Grillot Exhibit 133

11 Number 15 was marked for purposes of
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13 Company:

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27 Dayton Industrial Drum:

28 Coolidge Wall

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11 Elizabeth Theobald Irvin, Coca-Cola
12 Refreshments USA, Inc. (Telephonically)
13 Robert L. Roberts, Flowserve
14 Malcolm Winne

15 * * *

15:16:10 1 period. You had mentioned nine sixty per month
15:16:14 2 was the figure for quite some time?

15:16:16 3 A. I remember for a long time, I
15:16:18 4 believe it was nine fifty.

15:16:19 5 Q. Nine fifty for Dayton Power and
15:16:21 6 Light?

15:16:21 7 A. Right.

15:16:22 8 Q. And this is addressed to Dayton
15:16:24 9 Power and Light?

15:16:24 10 A. Right.

15:16:25 11 Q. Were you aware that there was an
15:16:27 12 increase at some point?

15:16:28 13 A. I know he was trying to get an
15:16:30 14 increase. I don't know if he ever did.

15:16:32 15 Q. Okay. You testified earlier that
15:17:05 16 you worked for Coca-Cola --

15:17:06 17 A. Correct.

15:17:07 18 Q. -- Bottling Company?

15:17:08 19 A. Correct.

15:17:09 20 Q. Do you know whether Coca-Cola ever
15:17:11 21 sent any kind of waste to the South Dayton
15:17:15 22 Dump & Landfill?

15:17:15 23 A. I know of a time.

15:17:17 24 Q. What's that?

15:17:18 25 A. That they dumped glass bottles and

15:17:23 1 wooden shells.

15:17:24 2 Q. When was that?

15:17:29 3 A. '63, '64, '65, somewhere in that
15:17:37 4 range.

15:17:40 5 Q. And you would have been thirteen
15:17:43 6 to --

15:17:43 7 A. Thirteen to fifteen.

15:17:44 8 Q. And why is that clear in your
15:17:46 9 memory?

15:17:47 10 A. Because my mother came and got
15:17:50 11 myself and a friend and we went and gathered
15:17:52 12 the bottles back up, put them back in the cases
15:17:55 13 and took them back to the stores for the
15:17:58 14 deposit.

15:17:58 15 Q. How much money did you get?

15:18:03 16 A. I think we got about twenty-six
15:18:06 17 dollars.

15:18:06 18 Q. Do you remember seeing any broken
15:18:11 19 bottles?

15:18:11 20 A. Many. We were upset over that.

15:18:13 21 Q. So you had to gather the nonbroken
15:18:17 22 ones from among the broken ones?

15:18:19 23 A. Correct.

15:18:20 24 Q. And you put them in some sort of
15:18:22 25 wooden cases?

15:18:22 1 A. Wooden cases.

15:18:23 2 Q. Which were also dumped?

15:18:25 3 A. Right.

15:18:26 4 Q. All right. Any other information
15:18:31 5 about Coca-Cola dumping at the site that you
15:18:36 6 know about?

15:18:36 7 A. No.

15:18:42 8 Q. Let me ask you about Monsanto
15:18:44 9 Company. Do you know the name Monsanto?

15:18:46 10 A. Right.

15:18:46 11 Q. Do you know anything about
15:18:48 12 Monsanto Company dumping at the South Dayton
15:18:52 13 Dump & Landfill?

15:18:52 14 A. I don't -- I know they did, but
15:19:01 15 how often and what, I don't know.

15:19:03 16 Q. What's the basis for your
15:19:05 17 knowledge that they did?

15:19:06 18 A. Because I just vaguely remember.

15:19:11 19 Q. Nothing more specific at this
15:19:12 20 time?

15:19:13 21 A. No.

15:19:13 22 Q. All right. Have you heard the
15:19:18 23 name Peerless Transportation Company?

15:19:19 24 A. I remember them.

15:19:21 25 Q. What do you know -- what -- what

1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Michelle A. Elam, a Notary
4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named DAVID A. GRILLOT, was by me first duly
8 sworn to testify the truth, the whole truth and
9 nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

20

21

22

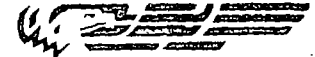
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